

CHAPTER 43**(HB 101)**

AN ACT relating to crimes and punishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 510.020 is amended to read as follows:

- (1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.
- (2) Lack of consent results from:
 - (a) Forcible compulsion;
 - (b) Incapacity to consent; or
 - (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- (3) A person is deemed incapable of consent when he or she is:
 - (a) Less than sixteen (16) years old;
 - (b) ***Sixteen (16) or seventeen (17) years old and the actor is at least ten (10) years older than the victim at the time of the sexual act;***
 - (c) An individual with an intellectual disability or an individual that suffers from a mental illness;
 - ~~(d)(e)~~ Mentally incapacitated;
 - ~~(e)(d)~~ Physically helpless; or
 - ~~(f)(e)~~ Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.
- (4) The provisions of subsection (3)~~(f)(e)~~ of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

➔Section 2. KRS 510.030 is amended to read as follows:

In any prosecution under this chapter in which the victim's lack of consent is based solely on his ***or her*** incapacity to consent because he ***or she*** was, ***at the time of the offense:***

- ~~(1)~~ Less than sixteen (16) years old;~~;~~
- ~~(2)~~ ***Sixteen (16) or seventeen (17) years old and the defendant was at least ten (10) years older than the victim;***
- ~~(3)~~ An individual with an intellectual disability;~~;~~
- ~~(4)~~ Mentally incapacitated;~~;~~ or
- ~~(5)~~ Physically helpless;~~;~~

the defendant may prove in exculpation that at the time ~~of the engaged in~~ the conduct constituting the offense he ***or she*** did not know of the facts or conditions responsible for such incapacity to consent.

➔Section 3. KRS 510.060 is amended to read as follows:

- (1) A person is guilty of rape in the third degree when:
 - (a) He or she engages in sexual intercourse with another person who is incapable of consent because he or she is an individual with an intellectual disability;
 - (b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;

- (c) *Being at least ten (10) years older than a person who is sixteen (16) or seventeen (17) years old at the time of sexual intercourse, he or she engages in sexual intercourse with the person;*
 - (d) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;
 - (e)~~(d)~~ Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under eighteen (18) years old with whom he or she comes into contact as a result of that position; or
 - (f)~~(e)~~ Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.
- (2) Rape in the third degree is a Class D felony.
- ➔Section 4. KRS 510.090 is amended to read as follows:
- (1) A person is guilty of sodomy in the third degree when:
- (a) He or she engages in deviate sexual intercourse with another person who is incapable of consent because he or she is an individual with an intellectual disability;
 - (b) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old; or
 - (c) *Being at least ten (10) years older than a person who is sixteen (16) or seventeen (17) years old at the time of deviate sexual intercourse, he or she engages in deviate sexual intercourse with the person;*
 - (d) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;
 - (e)~~(d)~~ Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than eighteen (18) years old with whom he or she comes into contact as a result of that position; or
 - (f)~~(e)~~ Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to deviate sexual intercourse.
- (2) Sodomy in the third degree is a Class D felony.
- ➔Section 5. This Act may be cited as Jenna's Law.

Signed by Governor March 30, 2018.